STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v ROBERT CHARLES DELINE, Defendant-Appellant.	FOR PUBLICATION December 27, 2002 9:25 a.m. No. 237307 Gratiot Circuit Court LC No. 01-004178-FH Updated Copy February 28, 2003

Before: Bandstra, P.J., and Murphy and Griffin, JJ.

PER CURIAM.

Defendant was convicted by a jury of operating a vehicle while under the influence of intoxicating liquor, third offense, MCL 257.625(1); and driving while his license was suspended, MCL 257.904(1). The trial court departed upward from the sentencing guidelines and sentenced defendant to serve forty to sixty months for his operating under the influence conviction. Defendant appeals his sentence as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

According to the police officers who testified at trial, defendant was driving a vehicle in excess of the speed limit. When the vehicle was stopped by the police officers, field sobriety tests led them to conclude that defendant was intoxicated and, later, blood drawn from the defendant showed a blood-alcohol level of 0.22, far in excess of the legal limit for driving. See MCL 257.625(1). However, defendant and his passenger contended that the passenger, not defendant, had been driving the car. Although defendant was in the passenger seat at the time the car was stopped, the police officers testified that they saw activity indicating that the two occupants of the vehicle had switched positions. The jury apparently sided with the police officers in finding defendant guilty.

Defendant first argues that the trial court incorrectly scored offense variable (OV) 19 by determining that defendant had "interfered with or attempted to interfere with the administration of justice" and assigning ten sentencing points as a result. See MCL 777.49(c). Defendant here presents a question of statutory interpretation that we review de novo. *People v Hegwood*, 465 Mich 432, 436; 636 NW2d 127 (2001). We agree with defendant's position.

"Interference with" justice is equivalent in meaning to "obstruction of" justice. Garner, *A Dictionary of Modern Legal Usage* (2d ed), p 611. Obstruction of justice "is a broad phrase that

captures every willful act of corruption, intimidation, or force *that tends somehow to impair the machinery of the civil or criminal law*." *Id.* (emphasis added). Interference with the administration of justice thus involves an effort to undermine or prohibit the judicial process by which a civil claim or criminal charge is resolved. See, e.g., *People v Coleman*, 350 Mich 268; 86 NW2d 281 (1957) (affirming a conviction of obstruction of justice involving witness tampering).

Defendant here did not engage in any conduct aimed at undermining the judicial process by which the charges against him would be determined. Instead, he tried to evade those charges altogether by switching seats with his passenger and refusing an immediate blood-alcohol content test. If we were to conclude that this evasive and noncooperative behavior justified the imposition of points under OV 19, that variable would apply in almost every criminal case. Defendants almost always seek to hide their criminal behavior and rarely step forward to offer evidence proving their guilt.

Accordingly, the imposition of ten sentencing points against defendant under OV 19 was error. As defendant himself admits, the guidelines sentencing range that applies in the absence of those points has an upper limit only one month lower than that employed by the trial court. In light of the trial court's reasons for exceeding the guidelines as well as our conclusion that a significant departure upward was appropriate here (see discussion below), we conclude that the slight OV 19 error was harmless and do not remand for resentencing. MCR 2.613(A).

Defendant further argues that the trial court improperly imposed a sentence that departed upward from the guidelines range. The longest minimum term authorized by that range was twenty-four months; the trial court imposed a minimum sentence of forty months. We review this issue to determine "whether the trial court had 'a substantial and compelling reason' to depart from the guidelines." *People v Babcock*, 244 Mich App 64, 74; 624 NW2d 479 (2000), quoting MCL 769.34(11); see also MCL 769.34(3). In doing so, we may consider factors already taken into account during guidelines scoring if we find from the facts in the record that those factors were given inadequate weight. MCL 769.34(3)(b).

We do not find that the sentencing departure here was in error. As pointed out by the prosecutor, although defendant's history of misdemeanors and felonies was partially accounted for in the scoring of prior record variables, that scoring did not account for the number or extent of those offenses. Other factors not accounted for in the guidelines scoring indicate that defendant is unwilling or unable to accept responsibility for his actions or make the changes needed to protect the public from further driving offenses by him. For example, he was on probation for drunken driving at the time of his offense, he had a blood-alcohol level far in excess of the legal limit, he was driving although his license had been suspended, and he has been sentenced to jail for numerous drunken driving offenses.

We affirm.

/s/ Richard A. Bandstra
/s/ William B. Murphy
/s/ Richard Allen Griffin